

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alex Tuminello	Team: Squad #14	CCRB Case #: 201404710	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/14/2014 4:45 PM	Location of Incident: 49 Sickles Street	Precinct: 34	18 Mo. SOL 11/14/2015	EO SOL 11/14/2015	
Date/Time CV Reported Wed, 05/14/2014 4:59 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/14/2014 4:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Francisco Guzman	01295	931712	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Davin	24383	950278	034 PCT
2. SGT Vanessa Tejada	02025	935831	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Francisco Guzman	Abuse: PO Francisco Guzman stopped § 87(2)(b)	
B.POM Francisco Guzman	Force: PO Francisco Guzman used physical force against § 87(2)(b)	
C.POM Francisco Guzman	Abuse: PO Francisco Guzman searched § 87(2)(b)	
D.POM Francisco Guzman	Abuse: PO Francisco Guzman frisked § 87(2)(b)	
E.POM Francisco Guzman	Abuse: PO Francisco Guzman refused to provide his name and shield number to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

On May 14, 2014, at approximately 4:45 p.m., § 87(2)(b) walked out of his apartment located at 29 Sickles Street in Manhattan in order to retrieve money from a man that goes by the moniker “§ 87(2)(b)”. While in front of 49 Sickles Street in Manhattan, § 87(2)(b) met up with “§ 87(2)(b)” and observed four officers in an unmarked black Dodge pull up to the location. As the officers pulled up, “§ 87(2)(b)” left the location and an officer identified as PO Francisco Guzman of the 34th Precinct exited the vehicle from the front passenger seat. § 87(2)(b) stated that PO Guzman approached him from behind, grabbed onto his shirt, and pulled it (**Allegation A**). PO Guzman then put his hands to the upper part of § 87(2)(b)’s back and pushed him into a parked car (**Allegation B**). Upon pushing § 87(2)(b), PO Guzman stuck his hands into the front of § 87(2)(b)’s jeans pockets and took out two dollars (**Allegation C**). § 87(2)(b) then attempted to move away from PO Guzman as the officer patted along his waist and stuck his hands into the back two pockets of § 87(2)(b)’s jeans (**Allegation D** and **within Allegation C**). PO Guzman then returned the two dollars to § 87(2)(b). § 87(2)(b) stated that at the end of the incident, he requested PO Guzman’s ID and badge. § 87(2)(b) alleged that in response, PO Guzman verbally stated, “Pedro Martinez, 1259” (**Allegation E**).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined mediation because he wanted PO Guzman disciplined.
- On March 13, 2015, a Notice of Claim inquiry was sent to the NYC Comptroller’s Office. The response will be added to the case file upon its receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian and Officer Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 5A).
- PO Guzman has been a member of the NYPD for 12 years and has had 13 previous CCRB allegations involving 4 cases. PO Guzman has previous substantiated allegations in CCRB Case no. 201103000 for a retaliatory summons, a frisk and stop. PO Guzman received instructions in regards to this case. A search of a person was unsubstantiated in this case (Encl. 4A).

Civilian Statements

§ 87(2)(b) (COMPLAINANT/VICTIM)

- On June 3, 2014, § 87(2)(b) was interviewed at the CCRB (Encl. 7A-7F).
- On May 14, 2014, at approximately 4:45 p.m., § 87(2)(b) left his apartment to meet with a man who went by the moniker of “§ 87(2)(b)”. § 87(2)(b) stated that “§ 87(2)(b)” owed him money. The men met in front of 38 Sickles Street.
- Upon arriving at the location, § 87(2)(b) stated that “§ 87(2)(b)” gave him the two dollars he owed and that afterwards an unmarked black Dodge with four plain-clothed officers located inside pulled up to the location. PO Guzman exited the vehicle from the front passenger seat and approached § 87(2)(b) from behind. PO Guzman grabbed § 87(2)(b)’s shirt and pulled it. PO Guzman then applied his hands to the upper part of his back and pushed him into a parked car.
- PO Guzman then stuck his hands into both § 87(2)(b)’s front jeans pockets and took out two dollars. § 87(2)(b) then attempted to move his body away from PO Guzman and he patted along his waist and stuck his hands into § 87(2)(b)’s back two jeans pockets.

- § 87(2)(b) stated that upon asking PO Guzman for his ID and badge, PO Guzman stated his name was Pedro Martinez and his badge number was 1259.
- § 87(2)(b) was not arrested and was released without a summons being issued.

Officer Statements

PO FRANCISCO GUZMAN (SUBJECT OFFICER)

- On September 18, 2014, PO Guzman was interviewed for the first time at the CCRB. On December 3, 2014, PO Guzman was interviewed at the CCRB for a second time in regards to several questions (Encl. 9A-9G).
- PO Guzman stated that on the date of the incident, he was driving down Sickles Street in an unmarked vehicle by himself. He indicated that he was travelling approximately five to ten miles per hour when he observed a hand to hand transfer of money between two individuals identified via the investigation as § 87(2)(b) and § 87(2)(b). PO Guzman stated that § 87(2)(b) gave the money to § 87(2)(b). PO Guzman stated that § 87(2)(b) is a known drug dealer. He also stated that his view was not obstructed by any vehicles parked on the side of the street and when asked if he observed anything else exchanged between § 87(2)(b) and § 87(2)(b) PO Guzman stated that all he saw was money.
- PO Guzman then stopped his vehicle in front of 49 Sickles Street and asked § 87(2)(b) "Do you live around here?" § 87(2)(b) stated that he lived at § 87(2)(b) and asked, "Do you want to search me? I don't have anything on me?" PO Guzman then looked at § 87(2)(b)'s right front jean's pocket and observed a large bulge that was square in shape. He touched the outside of the pocket and asked, "What do you have in there?" § 87(2)(b) stated that the item was a cell phone. PO Guzman stated that the touching of the pocket was the extent of his physical interaction. Physical force was never used against § 87(2)(b).
- PO Guzman stated that § 87(2)(b) then began to look at his badge. He then asked § 87(2)(b) "Do you want me to write it down?" § 87(2)(b) stated, "Give me a plastic card with your shield on it." PO Guzman stated that § 87(2)(b) wanted a PBA card. PO Guzman told him that he could not give him a PBA card and § 87(2)(b) stated, "Ok, I am filing a complaint."

PO JOSEPH DAVIN (WITNESS OFFICER)

- On December 3, 2014, PO Davin was interviewed at the CCRB (Encl. 11A-11C).
- PO Davin stated that he was not present for an incident involving § 87(2)(b) and PO Guzman on May 14, 2014. According to his memo book, PO Guzman was his partner on the date of the incident but because of an earlier arrest, he was separated from PO Guzman at the time of the incident.

Potential Issues

- The investigation was unable to contact the individual that § 87(2)(b) and PO Guzman identified as, § 87(2)(b). Both men did not know § 87(2)(b)'s real name and § 87(2)(b) could not provide any information in regards to his whereabouts.
- While § 87(2)(b) stated that he interacted with four officers on the date of the incident, PO Guzman stated that he was the only officer present. On February 12, 2015, the undersigned investigator attempted to contact § 87(2)(b) via telephone in regards to scheduling him for a photo array appointment. The undersigned investigator spoke to § 87(2)(b).

§ 87(2)(b)'s father who stated that § 87(2)(b) had recently passed away. § 87(2)(b)'s death was unrelated to this incident.

NYPD Documents

- The 34th Precinct's Tour 2 Roll Call from May 14, 2014 indicates that PO Guzman was working SNEU with PO James Gilson, PO Jose Rosario, PO Elvin Pichardo, PO Elvis Delacruz, PO Joseph Davin, PO Kevin Harding and Sgt. Vanessa Tejada (Encl. 13A-13O).
- The Stop, Question and Frisk Index that was opened on May 12, 2014 and closed on May 23, 2014 does not indicate any entry made by PO Guzman in regards to his stop and frisk of § 87(2)(b) (Encl. 14A).

Video Footage

- During his CCRB statement, § 87(2)(b) stated that this incident occurred down the street from his apartment building and explained that his building had video surveillance. On August 18, 2014, the undersigned investigator retrieved video footage from the A and E Reality Group from May 14, 2014. The footage does not show § 87(2)(b)'s interaction with PO Guzman from the date of the incident and it appears the angle of the camera does not show the location where the incident would have occurred.

Findings and Recommendations

Explanation of Subject Officer Identification

- When § 87(2)(b) filed his complaint via telephone with the CCRB, he stated that he interacted with PO Guzman from the 34th Precinct during this incident. During his CCRB statement, § 87(2)(b) stated that upon asking PO Guzman for his ID and badge, PO Guzman stated his name was Pedro Martinez and his shield number was 1259. The investigation determined that the digits provided by § 87(2)(b) for PO Guzman matched the digits his actual badge number which is 01295, with only the last two digits in the shield number transposed with each other. PO Guzman corroborated that he was the only officer that interacted with § 87(2)(b) on the date of the incident. § 87(2)(g)

Recommendations

Allegation A: Abuse of Authority- PO Francisco Guzman stopped § 87(2)(b)

Allegation D: Abuse of Authority- PO Francisco Guzman frisked § 87(2)(b)

§ 87(2)(b) alleged that upon meeting up with "§ 87(2)(b)" on Sickles Street in Manhattan, an unmarked black Dodge pulled up to his location. An officer identified as PO Guzman exited the vehicle from the front passenger seat. § 87(2)(b) alleged that as he attempted to move away from PO Guzman, he patted along his waistband.

PO Guzman stated that on the date of the incident, he was driving down Sickles Street in an unmarked vehicle by himself. He was travelling approximately five to ten miles per hour when he observed a hand to hand transfer of money between § 87(2)(b) and "§ 87(2)(b)". PO Guzman stated that "§ 87(2)(b)" is a known drug dealer. When asked if he observed anything else exchanged, PO Guzman stated that all he observed exchanged was money. He also stated that his view was not obstructed by any vehicles parked on the side of the street and he did not observe anything else transferred besides money. PO Guzman then stopped the vehicle in front of 49

Sickles Street and asked § 87(2)(b) “Do you live around here?” § 87(2)(b) stated that he loved at § 87(2)(b) and asked, “Do you want to search me? I don’t have anything on me?” PO Guzman then looked at § 87(2)(b)’s right front jeans pocket and observed a large bulge that was square in shape. He touched the outside of the pocket and asked, “What do you have in there?” § 87(2)(b) stated that the item was a cell phone.

It has been well established that before a police officer may stop and forcibly detain an individual, he must entertain a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. People v. Debour, 40 N.Y. 2d 210 (1976) (Encl. 1A-1K). A “frisk” may be justified where the officer has knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety. People v. Batista, 88 N.Y. 2d 650 (1996) (Encl. 2A-2D). Furthermore, a police response subjectively premised upon a “hunch” or “gut reaction” is an insufficient predicate upon which to found a search and seizure. People v. Marine, 142 A.D. 2d 368 (1989) (Encl. 2E-2G). According to People v. Couch, N.Y. App. Div. (2013) (Encl. 2H-2I), an officer trained in street level narcotics only had founded suspicion that criminality was afoot, when he observed a man transfer money to another man for a watch in an area known to have a high level of narcotics activity.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation B: Force- PO Francisco Guzman used physical force against § 87(2)(b)

Allegation C: Abuse of Authority- PO Francisco Guzman searched § 87(2)(b)

§ 87(2)(b) alleged that he was approached from behind and PO Guzman grabbed his shirt and pulled it. PO Guzman then applied his hands to the upper part of his back and pushed him into a parked car. § 87(2)(b) also alleged that PO Guzman then stuck his hands into his front jeans’ pockets and took out two dollars. Upon frisking § 87(2)(b)’s waistband, § 87(2)(b) also alleged that PO Guzman stuck his hands into his back jeans’ pockets.

PO Guzman stated that on the date of the incident, he never used any type of physical force against § 87(2)(b). He also stated that he never searched § 87(2)(b) and the extent of their physical interaction was when he touched a bulge on his right front pocket. PO Guzman stated that the incident lasted approximately one minute.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g) [Redacted]

Allegation E: Abuse of Authority- PO Francisco Guzman refused to provide his name and shield number to § 87(2)(b)

During his CCRB statement on June 3, 2014, § 87(2)(b) alleged that he requested PO Guzman's ID and badge number. § 87(2)(b) stated that PO Guzman identified himself as "Pedro Martinez" and provided the badge number 1259. The investigation found that during his initial phone call to the CCRB on May 14, 2014, § 87(2)(b) provided to the CCRB the name PO Guzman in regards to the officer he interacted with. He also stated that he was from the 34th Precinct. § 87(2)(b) did not mention the name "Pedro Martinez" during his initial phone statement.

PO Guzman stated that during his interaction with § 87(2)(b) he began to look at his badge. PO Guzman then stated in regards to his badge, "Do you want me to write it down?" § 87(2)(b) then stated, "Give me a plastic card with your shield on it." PO Guzman stated that § 87(2)(b) was asking for a PBA card. PO Guzman stated that he could not have a PBA card and § 87(2)(b) stated, "Ok I am filing a complaint."

§ 87(2)(g) [Redacted]
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§ 87(2)(g) [Redacted]

§ 87(4-b) § 87(2)(g) [Redacted]
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Team: _____

Investigator: _____

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Supervisor:	_____	_____	_____
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Reviewer:	_____	_____	_____
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